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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,229	07/02/2001	Hanspeter Reust	1177-001A	9023

23622 7590 01/21/2003

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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 01/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/897,229

Applicant(s)

REUST, HANSPETER

Examiner

Gina C. Yu

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on December 17, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

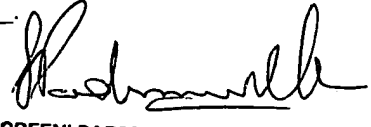
Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-5,7-12,14,17 and 18.

Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


SREENI PADMANABHAN
PRIMARY EXAMINER

1/16/03

Continuation of 2. NOTE:

The proposed claim 1 requires further search and consideration, as the term "consisting essentially of" obviates the method steps used in the Phillips patent. Examiner views it necessary to further search with that particular aspect of the invention to fully determine the patentability of the claimed invention.

The proposed claim 22 does not place the application in better form for appeal, as the term "completing the formulation of the cosmetic product" renders the claim vague and indefinite. Since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. Claim 22 is also not a proper process claim under 35 U.S.C. 101 because the recitation "completing the formulation of a cosmetic composition", without setting forth any steps involved in the process, results in an improper definition of a process. The limitation "completing the formulation of a cosmetic composition" also requires further search and consideration.

Furthermore, claims 7-10, 13, and 17 would be invalid in view of the proposed amendment, since these claims depend on claims 3, which would be cancelled.

Continuation of 5. does NOT place the application in condition for allowance because: the rejections are maintained as indicated in the previous Office action dated November 5, 2002.

While applicants argue that the claimed process of making a premix is distinct from the process described in the Phillip patent, examiner respectfully disagrees. The

reference teaches that the composition produced according to the Phillips reference also is an intermediate product, wherein the end use of the composition would vary "depending upon the desired end use and properties of the foamed composition". See Phillips, col. 2, line 62 – col. 3, line 7. For example, Example 5 describes the method of forming a whey protein mixture which is later used to formulate a cosmetic composition. While applicants argue that the Phillips reference fails to teach the pasteurization step as recited in the instant claim, it is noted that the reference also teaches a heating step of the whey protein mixture. Applicants' argument concerning the difference in the whey content is also noted, but claim 1 is not limited to the whey content, and the Phillips patent teaches that the aqueous whey protein solution contains 5 % solid therein. See Examples. In response to the applicants' argument that the Japanese abstract is limited to deodorizing a humectant from milk, examiner reiterates that the abstract teaches the method of pasteurizing whey protein useful for cosmetic formulations. See English abstract.

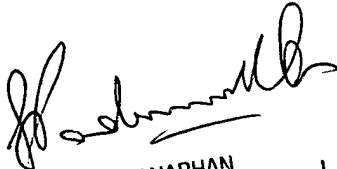
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
January 16, 2003


SREENI PADMANABHAN
PRIMARY EXAMINER

1/16/03